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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 345

JOHN P. HAMRICK,
Appellant,

vs.

STATE OF ALABAMA,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF ALABAMA

JURISDICTIONAL STATEMENT

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IN THE

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No. .....

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ON APPEAL FROM THE SUPREME COURT OF ALABAMA

JURISDICTIONAL STATEMENT

TO THE HONORABLES THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Appellant appeals to this Honorable Court the judgment and opinion of the Supreme Court of Alabama affirming a judgment of the Circuit Court of Jefferson County, Alabama, denying and dismissing appellant's petition for writ of habeas corpus, and holding Alabama's Criminal Sexual Psychopathic Persons statute to be constitutional. Appellant respectfully submits this statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that a substantial federal question is presented.

OPINIONS BELOW

The order of the Circuit Court of Jefferson County, Alabama, not reported (Appendix A); the judgment of the Circuit Court of Jefferson County, Alabama, not reported (Appendix B); the judgment and opinion of the Supreme Court of Alabama, not yet reported (Appendix C); the order of the Supreme Court of Alabama, not yet reported (Appendix D).

JURISDICTION

On November 7, 1966, appellant was committed, by an order of the Circuit Court of Jefferson County, Alabama (Appendix A), as an alleged criminal sexual psychopathic person, to the custody of the Warden of the County Jail of Jefferson County, Alabama, without bail, pursuant to provisions of Act No. 981, Acts of Alabama 1951, as amended; Title 15, Sections 434-442, Code of Alabama, 1940 (Recomp. 1958) (Criminal Sexual Psychopathic Persons) (Appendix E). On November 8, 1966, appellant challenged, by a petition for writ of habeas corpus, the validity and legality of his commitment and detention on the grounds, inter alia, that the Alabama statute, pursuant to which appellant had been committed, was unconstitutional. After a hearing, the Circuit Court of Jefferson County, Alabama, entered a judgment (Appendix B) denying and dismissing appellant's petition for writ of habeas corpus. On appeal, the Supreme Court of Alabama affirmed (Appendix C), holding that the Alabama statute was not unconstitutional. Appellant's application for rehearing was denied on June 22, 1967 (Appendix D). On June 22, 1967, notice of appeal to the Supreme Court of the United States was filed with the Clerk of the Supreme Court of Alabama.

The jurisdiction of this court is invoked under Title 28, United States Code, Section 1257 (2).

The following decisions sustain the jurisdiction of the Supreme Court to entertain this appeal:

Mills v. *Alabama*, 384 U.S. 214, 16 L. Ed. 2d 484, 86 S. Ct. 1434.

Bantam Books, Inc. v. *Sullivan*, 372 U.S. 58, 9 L. Ed. 2d 584, 83 S. Ct. 631.

Staub v. *Baxley*, 355 U.S. 313, 2 L. Ed. 2d 302, 78 S. Ct. 277.

STATUTES INVOLVED

Act No. 981, Acts of Alabama 1951, p. 1655, as amended (Criminal Sexual Psychopathic Persons); Title 15, Sections 434-442, Code of Alabama, 1940 (Recomp. 1958). Text Appendix E).

QUESTIONS PRESENTED

1. Does Alabama's Criminal Sexual Psychopathic Persons statute meet the requirements of Federal Due Process?

2. Did the Supreme Court of Alabama erroneously construe and apply the decisions of the United States Supreme Court in *Minnesota* v. *Probate Court*, 309 U.S. 270, 84 L. Ed. 744, 60 S. Ct. 523, and *Specht* v. *Patterson*, ____ U.S. ____, 18 L. Ed. 2d 326, 87 S. Ct. ____?

3. May constitutional infirmities apparent on face of statute be cured by constitutional application?

4. Was alleged criminal sexual psychopathic person denied procedural due process by commitment for examination without notice?

STATEMENT OF THE CASE

Appellant was arrested, and later indicted, on two separate charges of rape by two different women. Preliminary trials on both charges were held on April 13, 1966. At the preliminary trials only the prosecuting witnesses testified. On September 12, 1966, one of the rape cases was tried before a jury in the Circuit Court of Jefferson County, Alabama, and resulted in a verdict of "Not Guilty". The other case was set for trial on November 7, 1966, at which time the District Attorney filed a petition for the commitment and examination of the appellant (Original R. 7) as provided in Title 15, Sections 434-442, Code of Alabama, 1940 (Recomp. 1958) (Appendix E).

Appellant was thereupon committed to the County Jail of Jefferson County, Alabama, without bail, by an order of the Circuit Court of Jefferson County, Alabama (Appendix A).

On November 8, 1966, appellant filed in the Circuit Court of Jefferson County, Alabama, a petition for writ of habeas corpus (Original R. 4-5) challenging the validity and legality of his commitment on the grounds, inter alia, that the statute pursuant to which he was committed was unconstitutional.

After a hearing on appellant's petition, at which hearing the validity and constitutionality of the statute was at issue, an order denying and dismissing appellant's petition as being without merit was entered (Original R. 13, Appendix B).

The Supreme Court of Alabama affirmed (Appendix C), relying on the decision of this Court in *Minnesota* v.

Probate Court, 309 U.S. 270, 84 L. Ed. 744, 60 S. Ct. 523, in upholding the constitutionality of the Alabama statute.

On June 22, 1967, appellant's application for rehearing was denied (Appendix D). Notice of appeal to the Supreme Court of the United States was filed with the clerk of the Supreme Court of Alabama on June 22, 1967 (Original R. 25-26).

It has been appellant's contention throughout the habeas corpus proceedings below, as hereinabove described, and in the Supreme Court of Alabama that the Alabama statute is lacking the protections guaranteed an accused by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

ARGUMENT

Appellant first raised the issue of the constitutionality of the statute pursuant to the provisions of which he had been committed, in a petition for a writ of habeas corpus filed in the Circuit Court of Jefferson County, Alabama, on November 8, 1966 (Original R. 4-5). In its judgment (Appendix B) entered on that date, the Circuit Court of Jefferson County, Alabama, stated:

> "... This matter, by agreement of all the above persons, is submitted to the Court on the sole question of the legal validity and constitutionality of the proceedings provided for in Title 15, Sections 434 through 442 of the Code of Alabama of 1940, as amended, under which statute the petitioner had been committed to the County Jail." (Original R. 13).

The Circuit Court, in its opinion, then found appellant-petitioner's contentions, including the unconstitutionality of the statute, to be without merit. Relief was denied and appellant-petitioner appealed to the supreme Court of Ala-

bama. The unconstitutionality of the statute was submitted and argued to the Supreme Court of Alabama, which affirmed, stating, "We are not willing to say that the statute is unconstitutional on its face." (Appendix C).

The jurisdiction of this Court, is, therefore, properly invoked, as the state court judgment sought to be reviewed upheld a state statute against the contention that, on its face and as applied, the statute violated the Federal Constitution. 28 United States Code, Section 1257 (2). *Bantam Books, Inc.* v. *Sullivan*, 372 U.S. 58, 9 L. Ed. 2d 584, 83 S. Ct. 631 (Headnote 1).

While it might be argued that the Alabama Court's decision rested on non-federal grounds, inasmuch as the court noted, in its opinion, that no hearing had yet been held because the proceedings had not reached that stage, appellant contends that such an argument is without merit and relies on the authority of *Staub* v. *Baxley*, 355 U.S. 313, 2 L. Ed. 2d 302, 78 S. Ct. 277, wherein it was held that it was within the province of this Court ". . . to inquire not only whether the right was denied in express terms, but also whether it was denied in substance and effect, as by putting forward non-federal grounds of decision that were without any fair or substantial support. . . ."

The situation thus presented closely resembles that considered by this Court in *Mills* v. *Alabama*, 384 U.S. 214, 16 L. Ed. 2d 484, 86 S. Ct. 1434, wherein it was asserted that a judgment of the Alabama Supreme Court upholding the constitutionality of a statute was not a final judgment so as to be properly within this Court's appellate jurisdiction since the judgment did not literally end the case. This Court rejected that assertion as being without merit.

The Supreme Court of Alabama, in its opinion, sought to distinguish the decision of this Court in the recent case of *Specht* v. *Patterson*, ... U.S. ....., 18 L. Ed. 2d 326, 87 S. Ct.

....., wherein this Court held unconstitutional Colorado's Sex Offenders Act, Colo. Rev. Stat. Ann., Sections 39-19-1 to 10 (1963), with the gloss that the Colorado statute allowed an accused to be sentenced without an adversary hearing. Appellant submits that the only relevant distinguishing feature in the Alabama and Colorado statutes is that the Colorado procedure is "triggered" by a conviction of a sex offense, whereas the Alabama procedure is "triggered" by a charge of such an offense. This evil is much more invidious than that condemned in *Specht* v. *Patterson*, supra, wherein the Supreme Court denounced the Colorado procedure, inter alia, for its denial of an accused's right of confrontation.

There is no provision in the Alabama statute providing for the exercise of appellant's right to confront and cross-examine the witnesses on whose complaints the sex offense charges were based or the psychiatrists appointed by the Circuit Court to examine appellant. Under the statute, both on its face and as construed by the Supreme Court of Alabama in the opinion sought to be reviewed by this appeal, a circuit judge supplants a jury as the trier of fact on the issue of guilt or innocence of the sex offense charged, thereby denying an accused and this appellant the right to a trial by jury on such issue. The Alabama statute also permits an accused to be placed in jeopardy on charges of which he has previously been acquitted by a jury. The Alabama statute makes no provision for appellate review of any finding or order of the Circuit Court in proceedings thereunder. The Alabama statute has no provision for the giving of notice to an accused of the initiation of proceedings pursuant thereto.

Appellant contends, and has so contended in the proceedings as herein described, that he is being deprived of his liberty under a criminal statute that is totally lacking the protections guaranteed by the due process clause

of the Fourteenth Amendment. The State of Alabama has, by invoking the operation of the Criminal Sexual Psychopathic Persons statute, supra (Appendix E), deprived appellant of a trial by jury on the pending indictment charging appellant with the offense of rape; denied appellant the right to confront and cross-examine the witnesses against him; placed appellant in jeopardy on charges of which he has previously been acquitted; caused appellant to be committed to jail in proceedings initiated without notice; caused appellant to be committed to jail without bail; and caused appellant to be committed to jail on hearsay evidence taken at an ex parte proceeding to determine probable cause.

CONCLUSION

For the foregoing reasons, appellant submits that the Alabama statute is so lacking in the safeguards guaranteed him, and others similarly situated, by the due process requirements of the Fourteenth Amendment, as to raise a substantial federal question of sufficient proportion to sustain the jurisdiction of this Court to require plenary consideration of this cause, with briefs on the merits and oral argument, for its resolution.

Respectfully submitted,

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